IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 283 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PUSHPANJALI OWNERS ASSOCIATION
Versus
STATE OF GUJARAT

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Appearance :
MR AJ PATEL for Petitioner.
MS KRINA CALLA, ASST. GOVERNMENT PLEADER for Respondent.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/09/2007

ORAL JUDGMENT

To appreciate the submissions made by the learned

advocate for the petitioner, a brief history of events leading to this petition would be necessary.

The petitioner is an association of persons and has purchased sub-plots No. 1 and 7 out of a plot of land bearing Final Plot No. 84 of TP Scheme No. 2, Thaltej. [The land comprising of Final Plot No. 84 of TP Scheme No.2, Thaltej admeasuring 3642 sq. mtrs. Shall be referred to hereinafter as the said land].

Revabhai Zenabhai was the owner of the said land. Apparently, he became a deemed purchaser thereof being a tenant and purchased the land under the provisions of the Bombay Tenancy and Agricultural Lands Act [hereinafter referred to as the Tenancy Act].

Revabhai Zenabhai desired to dispose of the said land. He, therefore, with the permission of the Prant Officer granted on 09.01.81, sold the land to one Chunilal Gajjar on condition of payment of premium so fixed by the Prant Officer.

The said Chunilal Gajjar obtained non-agricultural use permission from the competent authority and sold the said land in favour of one Paresh Jaydevlal on 29.03.82.

The petitioner purchased two sub-plots being No. 1 and 7 on different dates in the year 1993. The petitioner thereafter approached Ahmedabad Urban Development Authority for permission to develop the said land. AUDA refused to grant permission on the ground that the plot held by the petitioner was subject to proceedings under the Urban Land [Ceiling and Regulation] Act, 1976

[hereinafter referred to as the ULC Act].

It appears that under similar circumstances, one Om Amardeep Association, who had also purchased certain sub-plot/s out the said land, had approached this Court by filing Special Civil Application No. 1165 of 1996, making multiple prayers. This Court, by an order dated 15.07.96 accepted the request of the said OM Amardeep Association for directing the Government to consider its case for allotment of the land even after paying market value having regard to the provisions contained in section 23 of the Land Acquisition Act. It appears that pursuant to the directions contained in the said order dated 15.07.96 passed in Spl. C.A. NO. 1165 of 1996, the Government passed an order on 21.04.97 granting the plot of land purchased by it to the said Om Amardeep Association on certain terms and conditions, including a condition for payment of market value.

The present petitioner has also approached this Court by way of filing the present petition, making multiple prayers.

Though one part of the challenge contained in the petition is to the stand of the respondent that the land in question was a surplus land under the provisions of ULC Act in the hands of Revabhai Zenabhai and therefore the subsequent transactions are null, learned advocate Shri A.J. Patel appearing for the petitioner focused his attention to the alternative prayer made in paragraphs 32 [C] of the petition, which reads as under:

> “[C]. The Honourable Court may be

> pleased to issue a writ of mandamus or any other appropirate writ, order or direction directing the respondent to accord the same treatment in the matter of grant of land to the petitioner as is accorded to Om Amardeep Association by granting land to it by its order at Annexure 'N' to the petition and to grant the land to the petitioner on the same terms and conditions on which land is granted to said Om Amardeep Association."

The Government has opposed the present petition mainly on the ground that the said land was excess vacant land in the hands of the original land owner Revabhai Zenabhai, who has filed a declaration in the requisite form under section 6 of the ULC Act; Out of the said land, area admeasuring 2642 sq. mtrs. of land was declared excess vacant land. This conclusion arrived at by the competent authority under the ULC Act has achieved finality.

On the basis of the factual parameters, learned advocate Shri A.J. Patel submitted that the petitioner Association had purchased the land without any prior notice about the land in question being declared excess vacant land. He further submitted that the original land owner, Revabhai Zenabhai, had misled the petitioner and other persons involved in this transaction. On one hand he has sold the land by obtaining permission from the Prant Officer under the Tenancy Act but had not obtained necessary permission, if so required, under the ULC Act and simultaneously, on the other hand, filed a

declaration under the ULC Act before the competent authority and allowed the competent authority to acquire portion of the land which was already sold by him. He submitted that thus the petitioner Association, which is a bonafide purchaser for value without notice, is made to suffer.

Mr. Patel further submitted that on account of the above reasons, this Court had passed an order in favour of Om Amardeep Association in Special Civil Application No. 1165 of 1996 on 15.07.1996 and directed the Government to consider the request of the said Association to allot the land on payment of market value. It is submitted that the case of the petitioner is identical and when the Government has accepted the request of Om Amardeep Association and passed an order on 21.04.07, there is no reason why the case of the petitioner should not be also treated similarly.

Mr. Patel further submitted that in fact, in the present matter also, this Court, by an interim order dated 27.09.2000 required the Government to consider the case of the petitioner in the same lines as in the case of Om Amardeep Association. It is pointed out that despite the said order, the Government has not taken any decision so far.

Ms. Calla, on the other hand submitted that ULC proceedings with respect to the land in question has achieved finality and the challenge of Om Amardeep was also turned down.

Having heard the learned advocates for the parties,

it appears that though the land was declared as excess vacant land in the hands of Revabhai Zenabhai and that the said decision has achieved finality, the question of allotment of the said land to the present petitioner still requires consideration. It is not in dispute that under similar circumstances, Om Amardeep Association had approached this Court by filing Special Civil Application No. 1165 of 1996 in which the learned Single of this Court, on 15.07.96 directed the State Government to consider the case of the said Association for allotment of the land on payment of market value having regard to the provisions of section 23 of the Land Acquisition Act. It is also not in dispute that pursuant to the aforesaid order passed by the Court, the Government had passed an order dated 21.04.97 allotting the land to Om Amardeep Association on certain terms and conditions including the condition of payment of appropriate market value for the land being allotted. It is also not in dispute that in the present petition also, a learned Single Judge of this Court, by order dated 27.09.00, had directed the State to consider the present petitioner's applications dated 25.03.98 and 05.12.99 for similar allotment. Relevant portion of the order passed by the learned Single Judge on 27.09.00 reads as under:

> “By way of this interim order, it is directed to the, respondent authority to consider the application dated 24th March, 1998 and 5th December, 1999 submitted by the petitioner in light of the observations made by this Court in Special Civil Application No. 1165 of 1996 dated 15th July, 1996. A

> copy of the order has been annexed with the petition at page 79 and also consider the fact that in pursuance of the observations made by this Court in aforesaid Special Civil Application, the order has been passed by the respondent dated 21st April, 1987 in favour of Om Amardip Association. The respondent is further directed to carry out the exercise as aforesaid on or before returnable date".

Under the circumstances, this petition is disposed of by directing the Government to take a decision on the request of the petitioner for allotment of the land referred to in the petition as sub-plots No. 1 and 7 of Final Plot No. 84 of T.P. Scheme No.2, Thaltej bearing in mind the observations made herein above. For this purpose, the petitioner shall make a fresh representation, attaching a copy of this order and such other documents as the petitioner so desires. The petitioner shall make such a representation within two weeks from today, and such a representation is made within time, the same shall be decided by the State Government as expeditiously as possible, and in any event, within three months from the date of receipt of the representation. In case the decision of the Government is adverse to the petitioner,it will be open to the petitioner to challenge the same in accordance with law.

With these directions, this petition is disposed of. Rule made absolute to the aforesaid extent. No order as

to costs.

[AKIL KURESHI, J.]

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